

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

ISABELITA DEMESA, Administratrix
of Estate, Personal Representative
of JOSE DEMESA,

Plaintiff,

v.

CIVIL ACTION NO. 1:07-00796

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order entered August 1, 2006, and filed in this case on December 7, 2007, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and recommendation. Magistrate Judge VanDervort submitted his proposed findings and recommendation ("PF & R") on September 18, 2008. (Doc. No. 21.) In that PF & R, the magistrate judge recommended that this court 1) grant the defendant's Motion for Remand (Doc. No. 20), and 2) remand this case to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further proceedings. (Doc. No. 21 at 2.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's PF & R. No party has filed objections within the requisite period, and the failure of any party to file such objections constitutes a

waiver of such party's right to a *de novo* review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985).

Having reviewed the PF & R filed by the magistrate judge (Doc. No. 21), the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **REVERSES** the decision of the Commissioner, **GRANTS** defendant's motion to remand (Doc. No. 20), and **REMANDS** this case to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further proceedings as outlined in defendant's unopposed motion. By separate Judgment Order entered of even date, the court enters judgment in favor of plaintiff. See Shalala v. Schaefer, 509 U.S. 292, 297-98 (1993) (holding that such a remand requires entry of final judgment).

The Clerk is directed to remove this matter from the court's active docket and to forward a copy of this written Memorandum Opinion and Order to counsel of record.

It is **SO ORDERED** this 24th day of October, 2008.

ENTER:

A handwritten signature in black ink, appearing to read "David A. Faber", is written over a horizontal line.

David A. Faber
United States District Judge